

ARTICLE VIII

Termination Prior To Closing

Section 8.1. Termination of Agreement.

This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Time, whether before or after approval by the stockholders of Purchaser:

- (a) By the written agreement of CareFirst and Purchaser;
- (b) By either of CareFirst or Purchaser in writing, if the Merger or Conversion shall not have been consummated on or before the three year anniversary of this Agreement (or such later date as may be agreed to by CareFirst and Purchaser); provided, however, that neither CareFirst nor Purchaser may terminate this Agreement under this Section if the failure has been caused by such party's material breach or default of its obligations under this Agreement;
- (c) By CareFirst in writing, if Purchaser or CFAC shall have (i) materially breached any of their respective covenants contained herein or (ii) breached any of their respective representations or warranties contained herein which (in the case of clauses (i) and (ii)), (A) in the aggregate, has resulted in a Purchaser Material Adverse Effect, and (B) is not capable of being cured within 60 days after notice of breach;
- (d) By Purchaser in writing, if CareFirst shall have (i) materially breached any of its covenants contained herein or (ii) breached any of its representations or warranties contained herein which (in the case of clauses (i) and (ii)), (A) in the aggregate, has resulted in a CareFirst Material Adverse Effect, and (B) is not capable of being cured within 60 days after notice of breach;
- (e) By either of CareFirst or Purchaser in writing, if any order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or governmental authority which prohibits or prevents the consummation of the transactions contemplated hereby, provided that Purchaser, CFAC and CareFirst shall have used their respective Best Efforts to have any such order, statute, rule, regulation, executive order, stay, decree, judgment or injunction vacated, lifted or stayed and the same shall not have been vacated, lifted or stayed within 30 days after entry, by any such court or governmental or regulatory agency;
- [(f) By CareFirst in writing, if the condition set forth in Section 7.1(b) is required but not satisfied within 180 days after the Plan of Conversion is filed with the Maryland Administration, the D.C. Superintendent and the Delaware Commission;]
- (g) By CareFirst in writing, if the Board of Directors of CareFirst authorizes CareFirst to execute a binding written agreement with respect to a transaction that constitutes a Superior Proposal; provided, however, that prior to any termination pursuant to this Section

8.1(g), (i) the Board of Directors of CareFirst, after consultation with legal counsel, shall determine in good faith that contemplation of such Superior Proposal and termination of this Agreement is required for such Board of Directors to comply with its duties under applicable law, (ii) CareFirst notifies Purchaser in writing that it intends to enter into such an agreement and provides Purchaser with the proposed definitive documentation for such Superior Proposal and (iii) Purchaser does not, within seven days after the receipt of such written notice and documentation, provide a written offer that the Board of Directors of CareFirst determines in good faith, after application of the analysis set forth in Section 6.14, to be at least as favorable as the Superior Proposal;

(h) By either of CareFirst or Purchaser in writing, if the Maryland Administration, the D.C. Superintendent or the Delaware Commissioner disapproves the Merger after a Hearing; or

(i) By either of CareFirst or Purchaser in writing, if the FTC or the DOJ notifies any party in writing of an intent to file a suit, action or proceeding to prohibit or restrain the consummation of the transaction contemplated by this Agreement.

Section 8.2. Termination of Obligations; Liquidated Damages.

(a) A termination of this Agreement pursuant to this Article VIII shall terminate all obligations of the parties hereunder without further liability, except for the obligations under Section 9.6 hereof or as otherwise provided in this Section. In the event this Agreement is terminated (1) by CareFirst pursuant to Sections 8.1(c) [or (f)], then Purchaser shall, upon CareFirst's written request, reimburse CareFirst within 15 days after demand for all its reasonable expenses (documented in reasonable detail) incurred in connection with this Agreement and the transactions contemplated hereby up to an aggregate amount equal to \$_____, (2) by Purchaser pursuant to Section 8.1(d), then CareFirst shall, upon Purchaser's written request, reimburse Purchaser within 15 days after demand for all its reasonable expenses (documented in reasonable detail) incurred in connection with this Agreement and the transactions contemplated hereby up to an aggregate amount equal to \$_____, (3) by CareFirst pursuant to Section 8.1(g), then CareFirst shall be obligated to pay Purchaser, within 15 days after such termination, a termination fee of \$37.5 million, or (4) by Purchaser pursuant to Section 8.1(d) and within 12 months after such termination CareFirst enters into a definitive agreement with respect to, or consummates, another Merger Proposal, then CareFirst shall be obligated to pay Purchaser, within 15 days after entering such definitive agreement, a termination fee of \$37.5 million.

(b) The parties agree that the liquidated damages and reimbursement of expenses set forth in Section 8.2(a) shall be the total damages and sole remedy of the parties upon the termination of this Agreement; provided, however, that termination pursuant to subparagraphs (c) or (d) of Section 8.1 hereof shall not relieve a party that willfully or intentionally defaults or breaches from any liability to the other party hereto.

ARTICLE IX

Miscellaneous

Section 9.1. Entire Agreement.

This Agreement (including the Appendices and the Disclosure Schedules) constitutes the sole understanding of the parties with respect to the subject matter hereof; provided, however, that this provision is not intended to abrogate any other written agreement between the parties executed with or after this Agreement, or abrogate the effect of the Confidentiality Agreement.

Section 9.2. Amendment.

No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

Section 9.3. Parties Bound by Agreement; Successors and Assigns.

The terms, conditions and obligations of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto prior to the Effective Time without the prior written consent of the other parties hereto; provided that Purchaser and CFAC each shall be permitted to assign this Agreement to a direct or indirect wholly-owned subsidiary of Purchaser so long as Purchaser remains fully liable for any failure of such assignee to perform its obligations hereunder. Except for the parties hereto and any person or entity covered by an indemnification provision hereunder, this Agreement is not intended to confer upon any other person any rights or remedies hereunder.

Section 9.4. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

Section 9.5. Modification and Waiver.

Any of the terms or conditions of this Agreement may be waived in writing at any time by the party which is entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision hereof (whether or not similar).

Section 9.6. Expenses.

Except as otherwise expressly provided herein, if the Merger is not consummated, all costs and expenses incurred in connection with this Agreement and the transactions

contemplated hereby shall be paid by the party incurring such costs or expenses, subject to the rights of such party contemplated under Article VIII with respect to a willful breach, violation or default by the other party hereto.

Section 9.7. Survival of Representations and Warranties.

The respective representations and warranties of CareFirst, Purchaser and CFAC contained herein or in any certificates or other documents delivered prior to or at the Closing by such parties pursuant to the terms of this Agreement shall terminate upon the consummation of the Merger and be of no further force and effect.

Section 9.8. Notices.

Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail (including by overnight courier or express mail service), postage or fees prepaid, or sent by facsimile with original sent by overnight courier,

If to Purchaser:

Pacific
[address]

Attn:

*with a copy (which shall
not constitute notice) to:*

If to CareFirst:

CAREFIRST, INC.
10455 Mill Run Circle
Owings Mills, Maryland 21117
Facsimile: (410) 998-5732
Attn: William L. Jews
President and Chief
Executive Officer

*with a copy (which shall
not constitute notice) to:*

CAREFIRST, INC.
10455 Mill Run Circle
Owings Mills, Maryland 21117
Facsimile: (410) 998-7810
Attn: John A. Picciotto, Esq.
Executive Vice President

or at such other address for a party as shall be specified by like notice. Any notice which is delivered personally in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or the office of such party. Any notice which is addressed and mailed in the manner herein provided shall be conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail or, if earlier, the time of actual receipt.

Section 9.9. Governing Law.

This Agreement is executed by the parties hereto in and shall be construed in accordance with and governed by the laws of Maryland without giving effect to the principles of conflict of laws thereof.

Section 9.10. Rules of Construction.

Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) Words importing the singular number include the plural number and words importing the plural number include the singular number.

(b) Words of the masculine gender include correlative words of the feminine and neuter genders.

(c) The headings and the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

(d) Any reference to a particular Article, Section, Appendix or Attachment shall be to such Article, Section, Appendix or Attachment of this Agreement unless the context shall otherwise require.

(e) The terms "agree" and "agreement" shall include and mean "covenant," and all agreements contained in this Agreement are intended to constitute covenants and shall be enforceable as such.

(f) For purposes of this Agreement, a party shall be deemed to have "knowledge" of a matter if any Executive Employee, director or trustee of the party or any of its Subsidiaries has received written notice or otherwise has actual knowledge of such matter or, in the reasonable exercise of such Executive Employee's, director's or trustee's duties in the ordinary course of business, should have known of such matter. Attached hereto as Attachment 9.10 is a list of each party's Executive Employees.